



Volume 8 | Issue 1

Article 1

2001

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Recommended Citation

Robert N. Davis, *Exploring the Contours of Agent Regulation: The Uniform Athlete Agents Act*, 8 Jeffrey S. Moorad Sports L.J. 1 (2001).

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VILLANOVA SPORTS & ENTERTAINMENT LAW JOURNAL

VOLUME 8

2001

NUMBER 1

Symposium Articles

EXPLORING THE CONTOURS OF AGENT REGULATION: THE UNIFORM ATHLETE AGENTS ACT

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I. INTRODUCTION

Newspaper headlines regularly report on the damages caused by agents and athletes. A headline in *Newsday* of February 29, 2000 read, "Auburn's Porter Confesses to Taking \$2,500 from Agent [Nate Cebrun]."¹ *Sports Illustrated*, in a special report, discussed the controversy surrounding Marcus Camby from the University of Massachusetts and two agents, John Lounsbury and Wesley Spears.² These agents estimated that they gave Camby more than \$40,000 in cash and gifts between December 1994 and March 1996.³ The reputation of the University of Massachusetts basketball program was highly tarnished, and the school was required to return the \$151,000 it earned in the NCAA tournament revenue in 1996.⁴ Let us go back a decade to 1987, when the *Atlanta Journal-Constitution* revealed that Agent Jim Abernethy had signed contracts with seven football players and two basketball players causing nine athletes to

* Representative to the Conference from the State of Mississippi; Legislative Liaison to the National Conference; Professor of Law, University of Mississippi School of Law. University of Hartford, B.A.; Georgetown University, J.D. The author presented these remarks at a symposium entitled *Regulating Sports Agents in the 21st Century*, Villanova University School of Law, Apr. 8, 2000.

1. *Auburn's Porter Confesses to Taking \$2,500 from Agent*, *Newsday*, Feb. 29, 2000, at A64.

2. Don Yaeger, *Tangled Web: Marcus Camby was Both Victim and Villain in His Illicit Dealings with Agents While at UMASS*, *SPORTS ILLUSTRATED*, Sept. 15, 1997, at 66 (noting agents' ability to "infiltrate a player's inner circle of friends and family").

3. *See id.* (discussing agents' hopes to lure Camby as client).

4. *See id.* (discussing penalties imposed on University).

risk ineligibility.⁵ Abernethy estimated that his expenses totaled approximately \$300,000 to \$500,000 over an eighteen month period.⁶

During the past several decades, there has been a steady stream of disclosures of contacts with sports agents in violation of the NCAA rules and of many state athlete agent laws.⁷ In 1983, the National Football League Players Association adopted regulations governing contract advisors, with players associations in basketball, baseball and hockey following suit shortly thereafter. Since 1981, at least twenty-nine states have enacted statutes regulating athlete agents. These states include: Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nevada, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, Tennessee, Texas and Washington.⁸ These statutes are not uniform and do not provide for reciprocal registration, renewal or enforcement. Several major universities and the NCAA asked the National Conference of Commissioners on Uniform State Laws to draft a Uniform Act. The NCAA agreed to finance the drafting project. Although treading on regulatory ground is usually avoided, the Conference reluctantly agreed to draft a Uniform Act.

5. Chris Mortensen, *Agent's Deals Could Affect 4 Bowl Games*, ATLANTA J.-CONST., Dec. 15, 1987, at A01, available at 1987 WL 5416355.

6. See *id.*

7. See, e.g., Matt Hayes, *GAMEDAY: UF's Harvey Says He's Talked to Agents*, FLA. TIMES UNION (Jacksonville), Apr. 1, 2000, at C1, available at 2000 WL 6821839 (explaining sports agent-related situation that University of Florida faced with its basketball program).

8. ALA. CODE §§ 8-26-1 to 41 (2000); ARIZ. REV. STAT. §§ 15-1761 to 1765 (2000); ARK. CODE ANN. §§ 17-16-101 to 207 (Michie 2000); CAL. BUS. & PROF. CODE § 18895-7 (West 2000); COLO. REV. STAT. §§ 23-16-101 to 108 (2000); CONN. GEN. STAT. §§ 20-553 to 58 (1999); FLA. STAT. ANN. §§ 468.451 to .4571 (West 2001); GA. CODE ANN. §§ 43-4A-1 to -19 (2000); IND. CODE §§ 35-46-4-1 to -4 (1998); IOWA CODE §§ 9A.1 to .12 (2000); KAN. STAT. ANN. §§ 44-1541 to -1515 (1999); KY. REV. STAT. ANN. §§ 518.010 to .80 (Michie 1997); LA. REV. STAT. ANN. §§ 4:421 to :430 (West 2000); MD. CODE ANN. BUS. REC. §§ 4-401-426 (1998); MICH. COMP. LAWS § 750.411e (1991); MINN. STAT. § 325E.33 (1995); MISS. CODE ANN. §§ 73-41-1 to -23 (1999); MO. ANN. STAT. §§ 436.200 to .212 (West 2000); NEV. REV. STAT. §§ 398.015 to -.255 (2000); N.C. GEN. STAT. §§ 78C-71 to -81 (1999); N.D. CENT. CODE §§ 9-15-01 to -05 (1999); OHIO REV. CODE ANN. §§ 4771.01 to -.99 (Anderson 2000); OKLA. STAT. tit. 70, §§ 821.61 to -.71 (1998); OR. REV. STAT. §§ 702.005-.991 (1999); 18 PA. CONS. STAT. § 7107 (2000); S.C. CODE ANN. §§ 59-102-10 to -50 (Law. Co-op. 1997); TENN. CODE ANN. §§ 49-7-2111 to -2207 (2000); TEX. REV. CIV. STAT. ANN. art. 8871 (Vernon 2001); WASH. REV. CODE §§ 18.175.010 to -.080 (1999) (repealed).

II. THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS

The National Conference of Commissioners on Uniform State Laws ("NCCUSL" or "Conference") promotes "uniformity in state law on all subjects where uniformity is desirable and practicable."⁹ The NCCUSL is composed of approximately 340 Commissioners representing every state, the District of Columbia, Puerto Rico and the U.S. Virgin Islands.¹⁰ These Commissioners usually are gubernatorial appointments, including lawyers, judges, legislators and law school professors.¹¹ The Conference was organized in 1892 to encourage uniformity and interstate cooperation by voluntary action of the state legislatures.¹² The Conference has drafted more than 250 uniform laws on a variety of subjects and is responsible for the Uniform Commercial Code and Uniform Probate Code.¹³ Most of the Conference's financial support comes from state appropriations; therefore, the NCCUSL is considered a state organization.¹⁴ Individual Commissioners are not compensated for their work with the Conference and frequently pay their own expenses to attend the annual meeting.¹⁵

The NCCUSL describes its procedures in the following manner:

[T]he Conference meets annually to consider drafts of proposed uniform legislation. Proposals that Uniform Acts be drafted, received from many sources, are referred to a Committee on Scope and Program that makes an investigation, sometimes hears interested parties or recommends a further study, and reports to the Conference whether the subject is one which it is desirable and feasible to draft a uniform law. If the Conference decides to

9. NAT'L CONFERENCE OF COMM'RS ON UNIF. STATE LAWS, 1999-2000 REFERENCE BOOK 8 [hereinafter 1999-2000 REFERENCE BOOK] (stating purpose of conference).

10. *See id.*

11. *See id.*

12. *See id.*

13. *See id.*

14. *See* 1999-2000 REFERENCE BOOK, *supra* note 9, at 9. The American Bar Association and the American Law Institute make annual contributions to the Conference. *See id.* If a proposed Uniform Act requires extensive research, substantial work by drafting experts and numerous meetings, the Conference may seek the financial support of a foundation. *See id.* In this case, the NCAA contributed \$50,000 toward the work of the Commission in developing the Uniform Athlete Agents Act. *See id.*

15. *See id.*

accept a subject, a special committee of Commissioners [called a Drafting Committee] is appointed to prepare a draft of an Act. The American Bar Association is invited to appoint an advisor to each drafting committee. Drafts are not submitted to the Conference until they have received extensive committee consideration. [This may include two or three meetings in addition to the annual conference.]

A draft Act must be discussed and considered section by section by the entire Conference at no fewer than two annual meetings before the Conference may decide by a vote of States whether to promulgate the draft as a Uniform Act. Each State is entitled to one vote, and an Act is not promulgated unless a majority of the States represented at an annual meeting and at least twenty jurisdictions have approved the draft. In addition, each Uniform Act may be submitted for consideration to the American Bar Association. The Drafting Committees of the Conference establish liaison with the American Bar Association and other interested groups throughout the drafting process.¹⁶

III. STUDY COMMITTEE

Any proposal that the Conference considers for uniform or model legislation is first submitted to the Committee on Scope and Program ("CSP"). The CSP acts as the initial screening agency to determine whether the subject merits consideration by the Conference. The CSP reports its findings, conclusions and recommendations to the Executive Committee. The Executive Committee, comprised of the officers of the Conference, then decides what course of action to take. The Executive Committee may assign the subject to a special committee for further study and recommendation, or it may decide that the subject is not appropriate for uniform regulation. If a study committee is appointed, the study committee is charged with the responsibility of making a careful and complete analysis of whether there is a need for such an act.

The Conference history of the Uniform Athlete Agents Act begins with the appointment of the Study Committee on Athlete Agents. This Committee was created by the Executive Committee at the 1996 mid-year meeting. In a letter from the Conference Pres-

16. *Id.* at 9-10.

ident at the time, Bion Gregory, to the Study Committee Chair, Richard C. Hite, President Gregory stated the following:

The committee was created to study the problem of sports agents contacting college athletes prematurely and affecting their eligibility, in order to determine whether a uniform act should and could be drafted consistent with National conference policy, and if so, whether outside funding would be available for the drafting effort.

While it is customary to appoint committees after the close of the Annual Meeting of the National Conference next succeeding the creation of the committee, I am appointing this committee at this time because of the interest of the National Collegiate Athletic Association in a uniform act covering this subject matter. This subject has been considered by the Scope and Program Committee on several occasions and the Conference has received correspondence from interested parties concerning the proposed act. Considering the expertise of the members of the study committee, I am confident that it can make a recommendation to the Scope and Program Committee at the forthcoming Annual Meeting.¹⁷

Thus, the Study Committee was created on June 14, 1996. Approximately one month later, the Study Committee Chair, Dick Hite, wrote to members of the Study Committee, informing them that the CSP's recommendation to the Executive Committee to form a drafting committee had been approved.

On July 23, 1996, Study Committee Chairman Hite wrote to members of the committee to advise them that on July 16, 1996, the Executive Committee approved the CSP's recommendation to establish a drafting committee to "draft an act to govern the relationship among sports agents, student athletes and educational institutions."¹⁸ That was the good news. The discomfoting news was the three-to-two vote in the CSP and the six-to-five vote in the Executive Committee to approve the project in the first place.¹⁹ The message was clear that the support for this project was not overwhelming because of a "heavy Conference agenda and concern

17. See Letter from Bion Gregory, President, NCCUSL, to Richard C. Hite, Chairman, Study Committee (June 14, 1996) (on file with author).

18. See Letter from Richard C. Hite, Chairman, Study Committee, to Study Committee Members (July 23, 1996) (on file with author).

19. See *id.*

that drafting a Uniform Athlete Agents Act would have less impact on a national basis than many other topics on the agenda or to be proposed.”²⁰

The Executive Committee also attached conditions to its approval. First, the Drafting Committee, once named, was directed to, “report to the Executive Committee at its January 1997 meeting on the availability of resources to support the drafting effort;” second, it was to include the interests of student-athletes in the drafting process; and third, it was to develop an outline of the proposed act by the time the Executive Committee met in January 1997.²¹

IV. DRAFTING COMMITTEE

During the next several months, Drafting Committee (“DC”) members were appointed, and a National Reporter to the DC was named.²² By a letter dated October 29, 1996, I was appointed as the National Reporter for the drafting effort.²³ By the letter dated December 2, 1996, I accepted the appointment.²⁴

The next step was to find funding. The DC began to search for financial contributions toward the drafting effort. DC Chairman Hite, former Study Committee Chairman, began the search for financing the drafting project for a Uniform Athlete Agents Act.²⁵ One of the initial issues was whether universities might be able to contribute to this effort. The DC sought an opinion from the Conference leadership and was advised that contributions from universities would be appropriate.²⁶

By January 1997, the DC received confirmation that the NCAA would allocate \$50,000 to fund the drafting of an act relating to sports agents.²⁷ Thus, the DC was authorized to proceed with ef-

20. *See id.*

21. *See id.*

22. *See* Letter from Richard C. Hite, Chairman, Study Committee, to Study Committee Members (Jan. 27, 1997) (on file with author). The original members of the Drafting Committee included: Harvey S. Perlman, Joshua M. Morse, III, Jerry L. Bassett, Robert N. Davis, W. Jackson Willoughby, Thomas L. Jones, Frederick P. Stamp, Jr., Harry M. Walsh, Charles W. Ehrhardt, Frederick P. Stamp and Harry Wiggins. *See id.*

23. *See* Letter from Fred H. Miller, Executive Director, to Professor Robert N. Davis (Oct. 29, 1996) (on file with author).

24. *See* Letter from Professor Robert N. Davis, to Professor Fred H. Miller (Dec. 2, 1996) (on file with author).

25. *See* Letter from Chairman Hite, to Study Committee Members (Dec. 12, 1996) (on file with author).

26. *See id.*

27. *See* Letter from Chairman Hite, to Drafting Committee (Jan. 27, 1997) (on file with author).

forts to develop a Uniform Athlete Agents Act, and the first meeting was scheduled for May 2 to 4, 1997 in Dallas, Texas.²⁸

The first task was to present the EC with an outline of an act regulating athlete agents. On January 16, 1997, as National Reporter, I sent DC Chairman Hite a letter detailing the history of sports agent regulation and attached an outline of proposed uniform legislation on athlete agents.²⁹ At that time, approximately twenty-seven states had adopted sports agent legislation. California and Kansas had recently adopted comprehensive new statutes, and Florida was the only state to require agents to pass a certification examination.³⁰ The letter indicated that states began to regulate agents in 1981, and the early approach focused on registration of agents, disclosure of past practice, work experience, internal operations and registration fees.³¹ By the late 1980s, widespread inducements paid to college athletes by aggressive sports agents convinced college administrators and state legislators that current efforts were not effective deterrents.³² Thus, beginning in 1988, several states re-evaluated the original sports agent regulatory models and chose, instead, to adopt legislation with stiffer penalties. These jurisdictions opted for laws that required larger surety bond amounts, civil and criminal sanctions for violations, including felony provisions, and the creation of civil causes of action against the athlete and agent.³³

As the DC began its work, several threshold issues were raised for consideration at the first committee meeting in May 1997. These issues were: (1) whether any state law would be preempted to the extent it may conflict with federal labor law (29 U.S.C. 159) and union regulation pursuant to the collective bargaining agreement; (2) whether the regulation of sports agents as part of the entertainment industry should include the regulation of personal managers and other agents in the entertainment industry; and (3) whether

28. See Letter from NCCUSL, to Drafting Committee (Mar. 17, 1997) (on file with author); see also Letter from Chairman Hite, to Professor Robert N. Davis (Mar. 18, 1997) (on file with author).

29. See Letter from Professor Robert N. Davis, National Reporter, to Chairman Richard C. Hite (Jan. 16, 1997) (on file with author).

30. See CAL. BUS. & PROF. CODE § 18895-7 (West 2000); 15 FLA. STAT. ANN. § 468.453 (2001); KAN. STAT. ANN. §§ 44-1541 to -1515 (1999).

31. See Letter from Professor Robert N. Davis, National Reporter, to Chairman Richard C. Hite (Jan. 16, 1997) (on file with author).

32. See *Abernethy v. State*, 545 So. 2d 185 (Ala. Crim. App. 1988) (holding that agent who signed contract with student-athlete in violation of NCAA rules was not violation of Alabama's statute regarding tampering with sports contests).

33. For a discussion of the California, Florida and Kansas statutes, see *supra* note 30 and accompanying text.

the model legislation would contain an examination requirement that tests the minimum proficiency to practice as an athlete agent. During the first committee meeting, these threshold issues were considered. The DC determined that preemption was not an issue at the moment; the focus of the legislation would be only on athlete agents and the committee would stay away from any kind of examination requirements at that time.³⁴

During the first DC meeting, a working draft of a uniform statute circulated as the starting point for considering legislation. The first official DC draft would not be developed until the comments from the May 1997 meeting were incorporated into the working draft. Thus, the working draft the DC discussed in May was not a "Committee Draft." No input had been received from the DC at that point. The first DC meeting was largely an organizational meeting to resolve the threshold issues and determine the direction in which to proceed.

The DC met at the annual Conference in Sacramento, California, in July 1997 and reviewed its progress to date. The next DC meeting was scheduled for November 21 to 23, 1997, in Memphis, Tennessee, where the DC's first draft was discussed. What began as a statute with approximately twenty-two sections was refined and now contained seven fairly extensive provisions. Time would serve to refine further the proposed uniform law. DC meetings review the proposed legislation word-by-word and line-by-line. Changes to the drafts are made as the reporter receives instructions from full committee participation.

The next several DC meetings included March 6 to 8, 1998, in Baltimore, Maryland, July 1998 at the annual Conference in Cleveland, and February 1999 at a meeting in Richmond, Virginia.

V. FIRST CONFERENCE READING

The first reading to the full Conference took place in July 1999 in Denver, Colorado. During that conference, Commissioners' written comments and comments from the floor reflected the following concerns: the overall scope of the Act, the duration of the registration period, the definition of athlete agent, the scope of the exception for relatives, consideration to exempt attorneys and the difficulty of getting insurance coverage for athlete agents. The NCAA also offered comments to the July 1999 draft. The NCAA

34. See First Drafting Committee Meeting Reporter's Notes (May 2, 1997) (on file with author).

suggested that the definition section should include a definition of “educational institution” and that the Uniform Athlete Agent Act ensures that important consumer information is available and provided to student-athletes. It also suggested adding language that would require a state to notify other jurisdictions when the state denies an athlete agent a certificate of registration, broadening the scope of the prohibited act section to contain a catch-all provision that prohibits athlete agents from committing any act that impacts on the eligibility status of a student-athlete and adding a section that gives the administering agency subpoena power.³⁵

The representative from the Major League Baseball Players Association made suggestions regarding the July 1999 draft. The Major League Baseball Players Association suggested improving the definition of “Athlete Agent.” It also raised concerns regarding the definition of “Student-Athlete” and the duration of a certificate of registration. Further, it requested clarification that potential loss of eligibility in the warning notice to student-athletes means the loss of intercollegiate eligibility.

Thereafter, the DC met in January 2000 in Washington, D.C. to incorporate the changes discussed during the annual Conference reading. Section VI of this Article discusses some of the highlights.

VI. HIGHLIGHTS

The Act is now comprised of twenty-one sections covering a range of topics including definitions, administration, registration, renewal, fees, form of contract notice to educational institutions, record keeping, criminal penalties, civil remedies, and administrative penalty.

The scope of the Act has been consistent with the original charge from the Conference Executive Committee, which was to “draft an act to govern the relationship among sports agents, student-athletes and educational institutions.”³⁶

The Committee was not interested in attempting to develop minimum educational or certification requirements for athlete agents because that was viewed as more appropriate for the players associations.

35. See NCAA Comments on Draft (July 23-30, 1999) (on file with author).

36. Letter from Chairman Richard C. Hite, to Study Committee Members (July 23, 1996) (on file with author).

A. Section 2. Definitions.

“Athlete Agent” status is intended to require any individual who directly or indirectly recruits or solicits a student-athlete to enter into an agency contract to register. The definition of “athlete agent” does not include a spouse, parent, grandparent or guardian of the student-athlete. The Commission did not intend for the definition to include family members providing assistance to the student-athlete. The Commission also considered whether to exempt attorneys from the coverage of this Act and decided that attorneys who are acting as athlete agents are required to register. Attorneys providing legal advice but not acting as athlete agents would not be required to register.

“Contact” is defined to include communications between an athlete agent and student-athlete aimed at recruiting or soliciting a student-athlete to enter into an agency contract.

“Student-Athlete” includes an individual who is eligible to engage in or may be eligible to engage in any intercollegiate sport in the future. The term “student-athlete” is defined to include individuals who are not yet in college or even eligible for college in an attempt to prevent agents from inducing high school students to jeopardize their college eligibility. It is also defined to include a high school dropout who may become eligible by completing a GED and a high school graduate who does not go to college immediately.

B. Section 3. Administration.

One of the provisions in this section gives the Secretary of State or administering agency subpoena power for any relevant material under this Act. The intent of this section is to reach any person doing business in the state, whether resident or nonresident, consistent with the minimum contacts theory of *International Shoe Co. v. Washington*.³⁷

C. Section 4. Registration.

It is fair to say that this is a registration statute “with teeth.” Any individual who acts as an athlete agent must register under this Act. This section contains an exception that permits an individual, who is not yet registered, to act as an athlete agent if the student-athlete initiates communication with the individual and files an ap-

37. 326 U.S. 310 (1945) (holding that “sufficient contacts or ties with the state” permits states to enforce such obligations).

plication for registration within seven days after initiation of the communication.

An agency contract resulting from conduct in violation of this section is void, and no individual owes any money or other consideration under the contract. The Commission's intent was that an individual in State A who contacts a student-athlete in State B would be acting as an athlete agent in both states; therefore the agent should register in both states. The intent of the Commission was to make this registration requirement as broad as constitutionally permissible, while remaining consistent with the minimum contacts theory of *International Shoe*.³⁸ Agents must register with every state in which they have established minimum contacts.

The intent of the Commission also was to discourage inappropriate contacts by making any resulting agency contract void and to permit the student-athlete to keep any inducement given to enter into the void contract.

D. Section 5. Registration As Athlete Agent; Form; Requirements.

This is a disclosure section that requires: the athlete agent to inform the administering agency in the registration application of any business or occupation engaged in during the previous five years; a description of formal training as an athlete agent; educational background; references; disclosure of all persons having a significant financial interest; conviction of any crime that would be identified as involving moral turpitude and determinations of false, misleading, deceptive or fraudulent representations; any imposition on a student-athlete of a sanction, suspension or declaration of ineligibility to participate; or any denial of an application for, suspension or revocation of, or refusal to renew, the registration.

Significantly, this section includes a reciprocal registration provision, which allows an individual who has submitted an application for registration in another state to submit a copy of the application and a valid certificate of registration from the other state. If this is done, the Secretary of State is required to accept the certificate of registration and application from the other state as an application for registration in this state if the application from the other state was submitted within the last six months or certifies that the information contained in the application is current, contains information substantially similar to or more detailed than that required in

38. See *id.* at 318 (establishing that continuous operations within state which are classified as "substantial" permit jurisdiction).

an application submitted in this state and was filed under penalty of perjury.

The representatives from the athlete agent industry felt, and the Commission agreed, that it was important to allow a single registration in those states enacting the Act. Thus, reciprocal registration is possible as long as it is done in compliance with this section. As I review the Act in its entirety, I am not yet certain that the committee has adequately addressed two cornerstones of this proposed uniform Act. The *raison d'être*, if you will, of this proposed Act is the issue of reciprocity and reciprocal enforcement and jurisdiction over agents doing business in more than one state. I am not sure if we have done enough, and I am not certain that we can do more. This is an issue that we will continue to explore.

E. Section 6. Certificate of Registration; Renewal; Issuance or Denial.

This section provides that the administering agency shall issue a certificate of registration if the applicant has complied with the registration requirements in Section 5(a). A certificate of registration is valid for two years. Section 6(b) addresses the reciprocity provisions of Section 5(b) and requires the administering agency to make a determination that the requirements for registration or licensure in the other state are substantially similar to or more stringent than those of this state.

Section 6(c) provides that the administering agency may refuse to issue a certificate of registration if a determination is made that the applicant has engaged in conduct that has a significant adverse effect on the applicant's credibility, honesty, integrity, or ability to serve as an athlete agent. Relevant factors that may be used in reaching the determination are listed in Section 6(c) and include among them consideration of whether the applicant has been convicted of a crime involving moral turpitude; making a materially false, misleading, deceptive or fraudulent representation; or engaging in conduct that would disqualify the applicant from serving in a fiduciary capacity.

Section 6(f) provides provisions for a reciprocal registration renewal application similar to those contained in the reciprocal certificate of registration application.

While the Act does not require a state to notify other states when it revokes, suspends, fails to renew or denies an athlete agent a certificate of registration, the Commission agreed that it would be

a good practice for a state to notify other states when it revokes, suspends, fails to renew or denies a certificate of registration.

Sections 6(e) and 6(g) reflect the Commission's intention for this Act to reach any person doing business in the state. Representatives from the athlete agent industry and the Committee agreed that it was important to allow a single renewal of a certificate of registration in those states enacting the Act. Thus, reciprocal renewal of a certificate of registration is possible as long as it is done in compliance with this section.

F. Section 7. Suspension, Revocation, or Refusal to Renew Registration.

This section incorporates due process requirements and provides that state administrative procedure laws apply.

G. Section 8. Temporary Registration.

This section permits issuance of a temporary certificate of registration while considering an application for registration or renewal. The Commission intended that the issuance of a temporary license should be discretionary, and the discretion should be cast in terms broad enough to include issuing a license in contested cases.

H. Section 9. Registration and Renewal Fee.

This section allows for the states to determine what fees will be applicable and includes Section (4) that permits the states to give credit for applications for registration and renewals filed in another state.

Although the question is one for each state to determine for itself, the Commission felt that most states would be inclined to set fees to recover registration costs. In that case, a registration or renewal fee based on a registration or renewal in another state should be less than a registration or renewal fee where the registering state was required to evaluate the application rather than review an application already submitted in another jurisdiction.

The Commission believes that athlete agent registration is one of the cornerstone provisions of the Act. The success of enforcing existing athlete agent registration has varied greatly from state to state. The wide range of registration fees imposed by states with existing athlete agent laws has likely contributed to low registration totals in many jurisdictions. The Commission believes that the future success of registration under this Act is contingent upon the

implementation of a reciprocal registration and renewal system with a reasonable fee structure.

I. Section 10. Form of Contract.

This section requires that the contract contain a few specifics and include a warning to the student-athlete that if this contract is signed, eligibility to compete in a sport is lost. If the agency contract does not conform to this section, it is voidable by the student-athlete.

J. Section 11. Notice to Educational Institution.

This section requires that the athlete agent and the student-athlete give written notice of the existence of the contract to the athletic director within seventy-two hours after entering into the agreement or before the next scheduled athletic event in which the student-athlete may participate, whichever occurs first.

K. Section 12. Student-Athlete's Right to Cancel.

The student-athlete is permitted to cancel an agency contract and keep any consideration received from the agent to induce the student-athlete. The Commission intended the term "inducement" to be construed as broadly as possible so that other consideration is included even if it is not a thing of value in the normal sense.

L. Section 13. Record Keeping.

The athlete agent is required to maintain certain records for a period of five years, and the records are required to be open for inspection by the administering agency.

M. Section 14. Prohibited Conduct.

The Commission recognized that criminalizing the conduct referred to by Section 14(a) raises questions about interfering in legitimate contracts where a student-athlete, such as a football or basketball player who wants to forego some portion of his or her eligibility, knowingly signs a contract with an agent that will terminate his or her collegiate eligibility. The Commission concluded that the large number of times when inducements were used improperly justified the restriction, particularly when a prohibited inducement could be given after signing the contract.

N. Section 15. Criminal Penalties.

This section makes certain prohibited acts criminal and is punishable either as a misdemeanor or felony and revocation of the athlete agent's license. Generally, the prohibition is geared toward acts intended to induce a student-athlete to enter into an agency contract and failing to register or willfully providing materially false information in a registration application.

The Commission is currently reviewing this section to determine whether certain acts contained in it warrant classification as a misdemeanor, while more serious violations warrant classification as a felony. As the draft currently stands, the listing makes the Act optional with respect to a misdemeanor or felony but the listed violations do not change. Some members believe that some of the listed violations are not as egregious as others, thus not warranting classification as a felony.

O. Section 16. Civil Remedies.

This section creates a cause of action for damages against the athlete agent, a student-athlete or both for damages caused by a violation of the Act. Damages recoverable include any provable damages that cause injury to the educational institution as a result of violation of this Act.

The purpose of this section is to give a cause of action to an educational institution that is sanctioned as a result of activities of an athlete agent, student-athlete or both. Subsection (b) is not intended to limit damages to those items specified, and subsection 9(c) makes clear the cause of action is not the exclusive cause of action or source of damages that may be available.

P. Section 17. Administrative Penalty.

This section provides for the assessment of a civil fine not to exceed \$25,000 (or some other figure as decided by the state) for a violation of this Act. The procedure for imposing the penalty and due process procedures is left to the adopting state's administrative procedure law.

VII. SECOND AND FINAL CONFERENCE READING

The Drafting Committee refined some of the language in the Act in preparation for the second and final reading at the Conference's annual meeting during July 2000 in St. Augustine, Florida. In particular, the DC worked on Section 2. Definitions, Section 5.

Registration, Section 10. Form of Contract and Section 14. Prohibited Acts section. During the second reading on the floor of the full convention, comments were received and changes made to Section 2. Definitions, Section 3. Administration, Section 4. Registration, Section 5. Registration Form, Section 6. Certificate Issuance, Section 7. Suspension, Revocation and Renewal, Section 10. Form of Contract, Section 11. Notice to Educational Institution, Section 13. Required Records, Section 14. Prohibited Conduct, Section 15. Criminal Penalties, Section 16. Civil Remedies and Section 17. Administrative Penalty. A new section was added to reflect the recent passage of the Electronic Signatures in Global and National Commerce Act. The Act was approved by the National Conference of Commissioners on Uniform State Laws at its 109th Annual Meeting in St. Augustine, Florida, July 28 to August 4, 2000.

The Act now contains twenty-two sections and includes provisions that: permit reciprocity of registration; authorize denial, suspension, or revocation of registrations based on similar actions in another state; regulate the conduct of individuals who contact student-athletes for the purpose of obtaining agency contracts; require notice to educational institutions when an agency contract is signed by a student-athlete; provide a civil remedy for an educational institution damaged by the conduct of an athlete agent or student-athlete; and establish civil and criminal penalties for violations of the Act.

Today, many college athletes entering the professional ranks are offered huge multimillion-dollar contracts. The majority of these athletes have agents who will negotiate the contracts. Most athlete agents provide valuable services, which student-athletes need. The services usually include negotiating with professional sports organizations and securing endorsement contracts. The services may also include financial and investment management, tax planning, legal counseling and a variety of other career management services. However, frequent headlines report improper or illegal contacts between agents, or would-be agents, and athletes with remaining intercollegiate eligibility.³⁹ The damage caused by improper and illegal enticements to student-athletes is far greater than the casual observer might believe. The student-athlete who enters into an agency contract may lose eligibility and may diminish his or her value in the professional sports market. The educational institution may also lose post-season competition revenue and may

39. For a discussion of these headlines, see *supra* notes 1-6 and accompanying text.

be subjected to sanctions from the NCAA.⁴⁰ Additionally, in some states, the athlete agent and student-athlete may be subject to criminal sanctions.⁴¹

As a result of problems with athlete agents and the student-athlete, at least twenty-nine states have enacted statutes regulating athlete agents.⁴² Certain provisions in the existing statutes, however, are vague and vary considerably from state to state. Furthermore, these statutes do not contain registration reciprocity. An athlete agent intending to do business in each state is required to comply with twenty-nine different sets of requirements for registration and be aware of twenty-nine different regulatory schemes. To address this problem, NCCUSL drafted the Uniform Athlete Agents Act. The purpose of the Uniform Act is to protect the interests of student-athletes and academic institutions by regulating the activities of athlete agents.⁴³

VIII. CONCLUSION

This proposed Uniform Act will not solve all of the regulatory problems that states currently have with agents. No piece of legislation can do that. What I hope the Act will do is to make compliance easier and provide for a process of reciprocal registration and renewal. At the very least, this Act potentially can provide uniformity to what is currently an inconsistent and cumbersome state legislative structure.

I would like to make one additional observation before I take questions. The structure of the athlete agent industry is in transition. Many small representation companies recently have been acquired by large conglomerates. The recent purchase by SFX Entertainment, Inc. of at least eleven significant sports agent

40. For an example of these sanctions as applied to the University of Massachusetts, see *supra* note 2 and accompanying text.

41. See ALA. CODE § 8-26-41 (2000); CONN. GEN. STAT. § 20-557 (1999); FLA. STAT. ANN. § 468.4561 (West 2001); GA. CODE ANN. § 43-4A-11 (2000); IND. CODE § 35-46-4-4 (1998); LA. REV. STAT. ANN. § 4:426 (West 2000); MICH. COMP. LAWS § 750.411e(2) (1991); MO. ANN. STAT. § 436.212 (West 2000); N.C. GEN. STAT. § 78C-71 to -81 (1999); N.D. CENT. CODE § 9-15-05 (1999); OHIO REV. CODE ANN. § 4771.99 (Anderson 2000); OKLA. STAT. tit. 70, § 821.66 (1998); OR. REV. STAT. § 702.991 (1999); 18 PA. CONS. STAT. ANN. § 7107(b) (West 2000); S.C. CODE ANN. § 59-102-20 (Law. Co-op. 1997); TENN. CODE ANN. § 49-7-2116 (2000); TEX. REV. CIV. STAT. ANN. art. 8871, § 8 (Vernon 2001); WASH. REV. CODE § 18.175.070 (1999) (repealed).

42. For a discussion of these states and their statutes, see *supra* note 8 and accompanying text.

43. See Press Release, Uniform Law Comm'n, Uniform Athlete Agents Act (Aug. 17, 2000) (on file with author).

groups including FAME, The Marquee Group, ISI, Tellem & Associates, Hendricks Management Company and Speakers of Sport, suggests a changing landscape.

As legislatures in all states begin to consider the Uniform Athlete Agent Act for adoption, we should think about the impact those sports-related acquisitions may have on the current proposed regulatory scheme. I do not know what the impact will be, but I think we should consider the possibilities and whether such acquisitions will affect our current regulatory approach.

APPENDIX

FINAL WITH COMMISSIONERS' COMMENT
September 1, 2000

UNIFORM ATHLETE AGENTS ACT

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

MEETING IN ITS ONE-HUNDRED-AND-NINTH YEAR
ST. AUGUSTINE, FLORIDA
JULY 28-AUGUST 4, 2000

UNIFORM ATHLETE AGENTS ACT

SECTION 1. SHORT TITLE.

This [Act] may be cited as the Uniform Athlete Agents Act.

COMMISSIONERS' COMMENT

The use of term "athlete agent" reflects the current usage in many States that have existing law on the same subject; e.g. Alabama [Section 8-26-1, et. seq., Code of Alabama 1975]; Colorado [Section 23-16-101, et. seq., Colorado Revised Statutes Annotated]; Iowa [Section 9A.1 et. seq., Iowa Code Annotated]; Louisiana [Louisiana Statutes Annotated, 4:424, Section 421 et. seq.]; Mississippi [Section 73-41-1, et. seq., Mississippi Code]; Missouri [Section 436.200, et. seq., Missouri Code]; North Carolina [Chapter 78C, North Carolina Code]; Oklahoma [Oklahoma Code Annotated, Section 70-821.1, et. seq.]; South Carolina [South Carolina Code Annotated, Section 59-102-10, et. seq.]; Texas [Title 132, Chapter 12, Article 8871, Vernon's Texas Code Annotated]; and Washington [Section 18.175.010, et. seq., Washington Business and Professions Code].

The term "Secretary of State" appears in brackets throughout this Act because States may assign the duties of administering this Act to another appropriate office.

SECTION 2. DEFINITIONS.

In this [Act]:

(1) "Agency contract" means an agreement in which a student-athlete authorizes a person to negotiate or solicit on behalf of the student-athlete, a professional-sports-services contract or an endorsement contract.

(2) "Athlete agent" means an individual who enters into an agency contract with a student-athlete or, directly or indirectly, recruits or solicits a student-athlete to enter into an agency contract. The term does not include a spouse, parent, sibling, [or] grandparent[, or guardian] of the student-athlete or an individual acting solely on behalf of a professional sports team or professional sports organization.

(3) "Athletic director" means an individual responsible for administering the overall athletic program of an educational institution or, if an educational institution has separately administered athletic programs for male students and female students, the ath-

letic program for males or the athletic program for females, as appropriate.

(4) "Contact" means a communication, direct or indirect, between an athlete agent and a student-athlete, to recruit or solicit the student-athlete to enter into an agency contract.

(5) "Endorsement contract" means an agreement under which a student-athlete is employed or receives consideration to use on behalf of the other party any value that the student-athlete may have because of publicity, reputation, following, or fame obtained because of athletic ability or performance.

(6) "Intercollegiate sport" means a sport played at the collegiate level for which eligibility requirements for participation by a student-athlete are established by a national association for the promotion or regulation of collegiate athletics.

(7) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government; governmental subdivision, agency, or instrumentality; public corporation, or any other legal or commercial entity.

(8) "Professional-sports-services contract" means an agreement under which an individual is employed or agrees to render services as a player on a professional sports team, with a professional sports organization, or as a professional athlete.

(9) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(10) "Registration" means registration as an athlete agent pursuant to this [Act].

(11) "State" means a State of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(12) "Student-athlete" means an individual who engages in, is eligible to engage in, or may be eligible in the future to engage in, any intercollegiate sport. If an individual is permanently ineligible to participate in a particular intercollegiate sport, the individual is not a student-athlete for purposes of that sport.

COMMISSIONERS' COMMENT

In paragraph (2), the definition of "athlete agent" means an individual and not a corporation or other business entity. However,

with respect to registration, a corporation or other business entity that employs athlete agents would not be required to register as an athlete agent but the individuals working for the corporation or other business entity would. The term includes not only an individual who enters into an agency contract with a student-athlete but also the “runners” that agents use to recruit the student-athlete to sign with a particular agent. The Drafting Committee considered and decided against exclusions for individuals otherwise licensed by the State, such as attorneys. The committee did not intend to require an attorney to register as an athlete agent in order to render legal services, as distinguished from services as an athlete agent, to a student-athlete.

The Drafting Committee did not intend the definition of “athlete agent” to include family members providing assistance to the student-athlete. The term “guardian” is bracketed because while generally “guardian” is understood to be a person who legally has the care of another person or property or both, different states may use another term to describe this relationship, 39 C.J.S. §§1-3 (1976). Also, the Committee did not intend this definition to include a professional athlete who is providing information to a student-athlete about an agent as long as the professional athlete is not acting as a runner.

In paragraph (4), “contact” is not meant to include estimates of the position in any professional draft the student-athlete could reasonably expect to have. However, the Committee did intend to include within the definition of “contact” communications intended to induce a student-athlete to sign an agency contract.

In paragraph (10), “student-athlete” is defined to allow the Act to apply to a two-sport athlete who has signed a professional contract in one sport but has eligibility remaining in another sport. For example, an individual who is not eligible to play college baseball but is eligible to play college basketball, is not a student-athlete for the purposes of baseball but is a student-athlete for the purposes of basketball. Thus, the individual could retain an agent for purposes of baseball representation only but could not retain an agent for basketball representation without losing eligibility remaining in basketball.

The term “student-athlete” is also defined to include individuals who are not yet in college or even eligible for college in an attempt to prevent agents from inducing high school students to jeopardize their college eligibility. It is also defined to include a high school dropout who may become eligible by completing a

GED and a high school graduate who does not go to college immediately.

SECTION 3. ADMINISTRATION; SERVICE OF PROCESS; SUBPOENAS.

(a) By acting as an athlete agent in this State, a nonresident individual appoints the [Secretary of State] as the individual's agent for service of process in any civil action in this State related to the individual's acting as an athlete agent in this State.

[(b)] [The [Secretary of State] may issue subpoenas for any material that is relevant to the administration of this [Act].]

COMMISSIONERS' COMMENTS

While, the office of the Secretary of State appears to be a likely office to administer an athlete agent registration program, a state might assign the duties to another appropriate office.

The addition of subsection (b) reflects the Committee's intention for this Act to reach any person doing business in the state, whether resident or nonresident, consistent with the minimum contacts theory of *International Shoe Co. v. Washington*, 326 U.S. 310 (1945).

The Committee's intention with the addition of subsection [(c)] was to provide subpoena power to the state agency administering this Act. The provision of subpoena power was intended to provide the Secretary of State or other agency the necessary investigative authority to obtain any relevant material that would aid the agency in enforcing this Act. The Committee recognizes that some state administrative procedure acts may provide agency subpoena authority that is enforced in the courts.

SECTION 4. ATHLETE AGENTS: REGISTRATION REQUIRED; VOID CONTRACTS.

(a) Except as otherwise provided in subsection (b), an individual may not act as an athlete agent in this State without holding a certificate of registration under Section 6 or 8.

(b) Before being issued a certificate of registration, an individual may act as an athlete agent in this State for all purposes except signing an agency contract, if:

(1) a student-athlete or another person acting on behalf of the student-athlete initiates communication with the individual; and

(2) within seven days after an initial act as an athlete agent, the individual submits an application for registration as an athlete agent in this State.

(c) An agency contract resulting from conduct in violation of this section is void and the athlete agent shall return any consideration received under the contract.

COMMISSIONERS' COMMENT

In subsection (a), although not dealt with specifically, the Committee thought it clear that an individual in State A contacting a student-athlete in State B is acting as an athlete agent in both states and therefore should register in both states. The intent of the Drafting Committee was to make this registration requirement as broad as constitutionally permissible consistent with the minimum contacts theory of *International Shoe Co. v. Washington*, 326 U.S. 310 (1945). Agents must register with every State in which they have established minimum contacts.

In subsection (b), the Committee intended to allow an individual to respond to inquiries before being required to register as an athlete agent. The Drafting Committee's intention was not to penalize an athlete agent who responds to an inquiry from a student-athlete but to ensure that any contact directed toward inducing the student-athlete to sign a contract was done in accordance with the requirements of this Act.

In subsection (c), the intention of the Drafting Committee was to discourage contacts in violation of the Act by making any resulting agency contract void.

SECTION 5. REGISTRATION AS ATHLETE AGENT; FORM; REQUIREMENTS.

(a) An applicant for registration shall submit an application for registration to the [Secretary of State] in a form prescribed by the [Secretary of State]. [An application filed under this section is a public record.] The application must be in the name of an individual and, except as otherwise provided in subsection (b), signed or otherwise authenticated by the applicant under penalty of perjury and state or contain:

(1) the name of the applicant and the address of the applicant's principal place of business;

(2) the name of the applicant's business or employer, if applicable;

(3) any business or occupation engaged in by the applicant for the five years next preceding the date of submission of the application;

(4) a description of the applicant's:

(A) formal training as an athlete agent;

(B) practical experience as an athlete agent; and

(C) educational background relating to the applicant's activities as an athlete agent;

(5) the names and addresses of three individuals not related to the applicant who are willing to serve as references;

(6) the name, sport, and last known team for each individual for whom the applicant acted as an athlete agent during the five years next preceding the date of submission of the application;

(7) the names and addresses of all persons who are:

(A) with respect to the athlete agent's business if it is not a corporation, the partners, members, officers, managers, associates, or profit-sharers of the business; and

(B) with respect to a corporation employing the athlete agent, the officers, directors, and any shareholder of the corporation having an interest of five percent or greater;

(8) whether the applicant or any person named pursuant to paragraph (7) has been convicted of a crime that, if committed in this State, would be a crime involving moral turpitude or a felony, and identify the crime;

(9) whether there has been any administrative or judicial determination that the applicant or any person named pursuant to paragraph (7) has made a false, misleading, deceptive, or fraudulent representation;

(10) any instance in which the conduct of the applicant or any person named pursuant to paragraph (7) resulted in the imposition of a sanction, suspension, or declaration of ineligibility to participate in an interscholastic or intercollegiate athletic event on a student-athlete or educational institution;

(11) any sanction, suspension, or disciplinary action taken against the applicant or any person named pursuant to paragraph (7) arising out of occupational or professional conduct; and

(12) whether there has been any denial of an application for, suspension or revocation of, or refusal to renew, the registration or licensure of the applicant or any person named pursuant to paragraph (7) as an athlete agent in any State.

(b) An individual who has submitted an application for, and holds a certificate of, registration or licensure as an athlete agent in another State, may submit a copy of the application and certificate in lieu of submitting an application in the form prescribed pursuant to subsection (a). The [Secretary of State] shall accept the application and the certificate from the other State as an application for registration in this State if the application to the other State:

(1) was submitted in the other State within six months next preceding the submission of the application in this State and the applicant certifies that the information contained in the application is current;

(2) contains information substantially similar to or more comprehensive than that required in an application submitted in this State; and

(3) was signed by the applicant under penalty of perjury.

COMMISSIONERS' COMMENT

Most of the requirements in subsection (a) are fairly common to registration acts. The language "An application filed under this section is a public record" is in brackets because some state laws may not treat this application as a public record. The Committee thought that paragraphs (7) through (12), inclusive, were critical to evaluating the qualifications of an athlete agent.

With regard to (a)(6), the Committee recognized that athlete agents who are attorneys may serve the client in a dual capacity. It was not the intention of the Committee to interfere with attorney-client privileges. However, it was the intention of the Committee to preclude the assertion of an attorney-client privilege when an attorney is acting as an agent. In other words, if an attorney acts as an athlete agent in negotiating an endorsement contract, the attorney would not be able to assert an attorney-client privilege with respect to the existence of the contract.

With regard to subsection (b), representatives from the athlete agent industry thought, and the Committee agreed, that it was important to allow a single registration in those States enacting the Act. Thus, reciprocal registration is possible as long as it is done in compliance with this section.

With regard to (a)(7)(A), this provision is not intended to include other salaried employees.

SECTION 6. CERTIFICATE OF REGISTRATION; ISSUANCE OR DENIAL; RENEWAL.

(a) Except as otherwise provided in subsection (b), the [Secretary of State] shall issue a certificate of registration to an individual who complies with Section 5(a) or whose application has been accepted under Section 5(b).

(b) The [Secretary of State] may refuse to issue a certificate of registration if the [Secretary of State] determines that the applicant has engaged in conduct that has a significant adverse effect on the applicant's fitness to act as an athlete agent. In making the determination, the [Secretary of State] may consider whether the applicant has:

(1) been convicted of a crime that, if committed in this State, would be a crime involving moral turpitude or a felony;

(2) made a materially false, misleading, deceptive, or fraudulent representation in the application or as an athlete agent;

(3) engaged in conduct that would disqualify the applicant from serving in a fiduciary capacity;

(4) engaged in conduct prohibited by Section 14;

(5) had a registration or licensure as an athlete agent suspended, revoked, or denied or been refused renewal of registration or licensure as an athlete agent in any State;

(6) engaged in conduct the consequence of which was that a sanction, suspension, or declaration of ineligibility to participate in an interscholastic or intercollegiate athletic event was imposed on a student-athlete or educational institution; or

(7) engaged in conduct that significantly adversely reflects on the applicant's credibility, honesty, or integrity.

(c) In making a determination under subsection (b), the [Secretary of State] shall consider:

(1) how recently the conduct occurred;

(2) the nature of the conduct and the context in which it occurred; and

(3) any other relevant conduct of the applicant.

(d) An athlete agent may apply to renew a registration by submitting an application for renewal in a form prescribed by the [Secretary of State]. [An application filed under this section is a public record.] The application for renewal must be signed by the applicant under penalty of perjury and must contain current information on all matters required in an original registration.

(e) An individual who has submitted an application for renewal of registration or licensure in another State, in lieu of submitting an application for renewal in the form prescribed pursuant to subsection (d), may file a copy of the application for renewal and a valid certificate of registration or licensure from the other State. The [Secretary of State] shall accept the application for renewal from the other State as an application for renewal in this State if the application to the other State:

(1) was submitted in the other State within six months next preceding the filing in this State and the applicant certifies the information contained in the application for renewal is current;

(2) contains information substantially similar to or more comprehensive than that required in an application for renewal submitted in this State; and

(3) was signed by the applicant under penalty of perjury.

(f) A certificate of registration or a renewal of a registration is valid for [two] years.

COMMISSIONERS' COMMENT

The intention of subsections (c) and (d) is not to have certain conduct automatically disqualify an individual from registration, but to allow the licensing agency to make a qualitative determination of the likelihood that the individual, if registered, would engage in conduct detrimental to a student-athlete or an education institution, or both.

Additionally, while the Act does not require [a] state[s] to notify other states when it revokes, suspends, fails to renew or denies an athlete agent a certificate of registration, the Committee agreed that it would be a good practice for a state to notify other states when it revokes, suspends, fails to renew or denies a certificate of registration.

The addition of subsection (f) reflects a consensus between representatives from the athlete agent industry and the Committee, that it was important to allow a single renewal of a certificate of registration in those states enacting the Act. Thus, reciprocal renewal of a certificate of registration is possible as long as it is done in compliance with this section.

SECTION 7. SUSPENSION, REVOCATION, OR REFUSAL TO RENEW REGISTRATION.

[(a)] The [Secretary of State] may suspend, revoke, or refuse to renew a registration for conduct that would have justified denial of registration under Section 6(b).

[(b)] The [Secretary of State] may deny, suspend, revoke, or refuse to renew a certificate of registration or licensure only after proper notice and an opportunity for a hearing. The [Administrative Procedures Act] applies to this [Act].]

COMMISSIONERS' COMMENT

With regard to section (b), the language "Administrative Procedures Act" is in brackets because states may refer to their administrative procedure law by another name. This provision does nothing more than what due process requires.

SECTION 8. TEMPORARY REGISTRATION.

The [Secretary of State] may issue a temporary certificate of registration while an application for registration or renewal of registration is pending.

COMMISSIONERS' COMMENT

The Commission intended that the issuance of a temporary license should be discretionary and the discretion should be cast in terms broad enough to include issuing a license in contested cases. The Commission did not feel it necessary that a temporary license had to be issued to protect an individual who had student-athlete initiated contact with a student-athlete under Section 4(b), since all that is required of the individual is that an application for registration be filed.

SECTION 9. REGISTRATION AND RENEWAL FEES.

An application for registration or renewal of registration must be accompanied by a fee in the following amount:

- (1) [\$] for an initial application for registration;
- (2) [\$] for an application for registration based upon a certificate of registration or licensure issued by another State;
- (3) [\$] for an application for renewal of registration; or

(4) [\$] for an application for renewal of registration based upon an application for renewal of registration or licensure submitted in another State.

COMMISSIONERS' COMMENT

Although the question is one for each State to determine for itself, the Commission felt that most States would be inclined to set fees in amounts to recover the costs of registration. In that case, a registration or renewal fee based on a registration or renewal in another State ought to be less than a registration or renewal fee where the registering State was required to evaluate the application rather than review an application already submitted in another jurisdiction.

The Commission believes that athlete agent registration is one of the cornerstone provisions of the Act. The success of enforcing existing athlete agent registration has varied greatly from state-to-state. The wide range of registration fees imposed by states with existing athlete agent laws has likely contributed to low registration totals in many jurisdictions. The Commission believes that the future success of registration under this Act is contingent on the implementation of a reciprocal registration and renewal system and a reasonable fee structure.

SECTION 10. REQUIRED FORM OF CONTRACT.

(a) An agency contract must be in a record, signed or otherwise authenticated by the parties.

(b) An agency contract must state or contain:

(1) the amount and method of calculating the consideration to be paid by the student-athlete for services to be provided by the athlete agent under the contract and any other consideration the athlete agent has received or will receive from any other source for entering into the contract or for providing the services;

(2) the name of any person not listed in the application for registration or renewal of registration who will be compensated because the student-athlete signed the agency contract;

(3) a description of any expenses that the student-athlete agrees to reimburse;

(4) a description of the services to be provided to the student-athlete;

(5) the duration of the contract; and

(6) the date of execution.

(c) An agency contract must contain, in close proximity to the signature of the student-athlete, a conspicuous notice in boldface type in capital letters stating:

**WARNING TO STUDENT-ATHLETE IF
YOU SIGN THIS CONTRACT:**

**(1) YOU MAY LOSE YOUR ELIGIBILITY TO COMPETE AS
A STUDENT-ATHLETE IN YOUR SPORT;**

**(2) IF YOU HAVE AN ATHLETIC DIRECTOR, WITHIN 72
HOURS AFTER ENTERING INTO THIS CONTRACT, BOTH
YOU AND YOUR ATHLETE AGENT MUST NOTIFY YOUR
ATHLETIC DIRECTOR; AND**

**(3) YOU MAY CANCEL THIS CONTRACT WITHIN 14
DAYS AFTER SIGNING IT. CANCELLATION OF THIS CON-
TRACT MAY NOT REINSTATE YOUR ELIGIBILITY.**

(d) An agency contract that does not conform to this section is voidable by the student-athlete. If a student-athlete voids an agency contract, the student-athlete is not required to pay any consideration under the contract or return any consideration received from the athlete agent to induce the student-athlete to enter into the contract.

(e) The athlete agent shall give a record of the signed or otherwise authenticated agency contract to the student-athlete at the time of execution.

COMMISSIONERS' COMMENT

With respect to subsection (a), the Committee, in view of the disparity in sophistication between the parties, thought it be important that there be a hard copy of the contract.

In subsection (d), the Committee thought that since the student-athlete may lose eligibility when an agency contract is signed, a contract that does not comply with this section ought to give the student-athlete the benefit of his or her bargain and therefore should be voidable at the option of the student-athlete. The student-athlete would exercise this option under Section 12 and would be entitled to keep any inducements received from the agent. This should be contrasted with an agency contract with an individual required to register as an athlete agent but who did not. In that case, the Committee felt the student-athlete should not be able, in effect, to ratify an unlawful agreement.

SECTION 11. NOTICE TO EDUCATIONAL INSTITUTION.

(a) Within 72 hours after entering into an agency contract or before the next scheduled athletic event in which the student-athlete may participate, whichever occurs first, the athlete agent shall give notice in a record of the existence of the contract to the athletic director of the educational institution at which the student-athlete is enrolled or the athlete agent has reasonable grounds to believe the student-athlete intends to enroll.

(b) Within 72 hours after entering into an agency contract or before the next athletic event in which the student-athlete may participate, whichever occurs first, the student-athlete shall inform the athletic director of the educational institution at which the student-athlete is enrolled that he or she has entered into an agency contract.

COMMISSIONERS' COMMENT

The Committee intended the term inducement to be construed as broadly as possible so that other consideration is included even if it is not a thing of value in the normal sense.

SECTION 12. STUDENT-ATHLETE'S RIGHT TO CANCEL.

(a) A student-athlete may cancel an agency contract by giving notice of the cancellation to the athlete agent in a record within 14 days after the contract is signed.

(b) A student-athlete may not waive the right to cancel an agency contract.

(c) If a student-athlete cancels an agency contract, the student-athlete is not required to pay any consideration under the contract or to return any consideration received from the athlete agent to induce the student-athlete to enter into the contract.

COMMISSIONERS' COMMENT

In subsection (a), it is assumed it is calendar days. The Commission intended the term inducement to be construed as broadly as possible so that other consideration is included even if it is not a thing of value in the normal sense.

SECTION 13. REQUIRED RECORDS.

(a) An athlete agent shall retain the following records for a period of five years:

(1) the name and address of each individual represented by the athlete agent;

(2) any agency contract entered into by the athlete agent; and

(3) any direct costs incurred by the athlete agent in the recruitment or solicitation of a student-athlete to enter into an agency contract.

(b) Records required by subsection (a) to be retained are open to inspection by the [Secretary of State] during normal business hours.

SECTION 14. PROHIBITED CONDUCT.

(a) An athlete agent with the intent to induce a student-athlete to enter into an agency contract, may not:

(1) give any materially false or misleading information or make a materially false promise or representation;

(2) furnish anything of value to a student-athlete before the student-athlete enters into the agency contract; or

(3) furnish anything of value to any individual other than the student-athlete or another registered athlete agent.

(b) An athlete agent may not intentionally:

(1) initiate contact with a student-athlete unless registered under this [Act];

(2) refuse or fail to retain or permit inspection of the records required to be retained by Section 13;

(3) fail to register when required by Section 4;

(4) provide materially false or misleading information in an application for registration or renewal of registration;

(5) predate or postdate an agency contract; or

(6) fail to notify a student-athlete before the student-athlete signs or otherwise authenticates an agency contract for a particular sport that the signing or authentication may make the student-athlete ineligible to participate as a student-athlete in that sport.

COMMISSIONERS' COMMENT

The Committee recognizes that criminalizing the conduct referred to by Section 14(a) raises questions about interfering in legitimate contracts where a student-athlete, such as a football or basketball player who wants to forego some portion of their [sic] eligibility, knowingly signs a contract with an agent that will terminate his or her collegiate eligibility. However, the Committee con-

cluded that the large number of times when inducements were improperly used justified the restriction, particularly when a prohibited inducement could be given after signing the contract.

The Committee intended for this section to apply to an athlete agent who hires another athlete agent to recruit a student-athlete. In that event both athlete agents must also comply with this Act.

SECTION 15. CRIMINAL PENALTIES.

An athlete agent who violates Section 14 is guilty of a [misdemeanor] [felony] and upon conviction, is punishable by [].

SECTION 16. CIVIL REMEDIES.

(a) An educational institution has a right of action against an athlete agent or a former student-athlete for damages caused by a violation of this [Act]. In an action under this section, the court may award to the prevailing party costs and reasonable attorney's fees.

(b) Damages of an educational institution under subsection (a) include losses and expenses incurred because, as a result of the conduct of an athlete agent or former student-athlete, the educational institution was injured by a violation of this [Act] or was penalized, disqualified, or suspended from participation in athletics by a national association for the promotion and regulation of athletics, by an athletic conference, or by reasonable self-imposed disciplinary action taken to mitigate sanctions likely to be imposed by such an organization.

(c) A right of action under this section does not accrue until the educational institution discovers or by the exercise of reasonable diligence would have discovered the violation by the athlete agent or former student-athlete.

(d) Any liability of the athlete agent or the former student-athlete under this section is several and not joint.

(e) This [Act] does not restrict rights, remedies, or defenses of any person under law or equity.

COMMISSIONERS' COMMENT

The purpose of this section is to give a cause of action to an educational institution that is sanctioned as a result of activities of an athlete agent or student-athlete or both. For example, in the circumstance where an athlete agent enters into an agency contract with a student-athlete and fails to notify the institution within 72

hours or prior to the next participation by the student-athlete and the institution is disqualified from post-season participation because of that, it is the Committee's intention to create a cause of action for the resulting loss of revenue. Subsection (b) is not intended to limit damages to those items specified. Subsection (c) makes clear the cause of action is not the exclusive cause of action or source of damages that may be available. Subsection (e) is intended to make it clear that a student-athlete may have a cause of action against the athlete agent for damages caused as a result of violations of this Act.

SECTION 17. ADMINISTRATIVE PENALTY.

The [Secretary of State] may assess a civil penalty against an athlete agent not to exceed [\$25,000] for a violation of this [Act].

COMMISSIONERS' COMMENT

The procedure for imposing the penalty and due process procedures are left to the adopting State's administrative procedures law.

SECTION 18. UNIFORMITY OF APPLICATION AND CONSTRUCTION.

In applying and construing this Uniform Act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter of this [Act] among States that enact it.

SECTION 19. ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.

The provisions of this [Act] governing the legal effect, validity, or enforceability of electronic records or signatures, and of contracts formed or performed with the use of such records or signatures conform to the requirements of Section 102 of the Electronic Signatures in Global and National Commerce Act, Pub. L. No. 106-229, 114 Stat. 464 (2000), and supersede, modify, and limit the Electronic Signatures in Global and National Commerce Act.

SECTION 20. SEVERABILITY.

If any provision of this [Act] or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this [Act] which can be given effect with-

out the invalid provision or application, and to this end the provisions of this [Act] are severable.

SECTION 21. REPEALS.

The following acts and parts of acts are hereby repealed:

SECTION 22. EFFECTIVE DATE.

This [Act] takes effect _____.